CERTAIN

PROPOSALS

OF DIVERS

Clerks and Attorneys

Of the COURT of

COMMON-PLEAS,

For the taking away Fines upon Original Writs and damage cleer, and Regulating the Proceedings at Law, and remedying some Inconveniences.

Whereby the Client will be much secured, the Process shortened, the greatest part of the charge of most Suits abated, and many unnecessary Suits in Law and Equity prevented.

Which is the End and Desire of the Proposers.

Presented to the Right Honourable the Lords and Commons assembled in Parliament.

LONDON,
Printed for *J. Starkey* at the *Mitre* in *Fleetstreet* near *Temple-Bar*. 1661.

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PROPOSALS

OF [illegible]

Clerks and Attorneys

[illegible]

COMMON-PLEAS.

[illegible] Original [illegible] Regulating [illegible] Proceedings [illegible] remedying [illegible] Inconveniences.

[illegible] the Client will be much secured, the Process [illegible] of [illegible] Suits [illegible]

[illegible] the Bail and Degree of the Proposers.

[illegible] the Right [illegible] the Lord and Commons [illegible]

LONDON.

[illegible]

TO THE RIGHT HONOURABLE THE LORDS and COMMONS Assembled in PARLIAMENT.

May it please your Honours,

THe humble Proposers observing some unnecessary charges and delay, introduced by the corruption and multitude of Offices and Officers, which still increased, besides some inconveniences that the corruption of time had produced, the same being more obvious to them than others, by reason of their experience in the practice of the Law: for remedy thereof consulted how to apply themselves to the Parliament; and to that purpose had severall meetings together, wherein the Proposals now presented to your view were agreed on, as things that would conduce much to the ease, benefit, and safety of

the Suitor, make good provision against the most generall inconveniences, prevent many frivolous and unnecessary Suits, shorten the proceſs in many, and ease the charge in all; and (which is not the least of their ambition) take away those Aspersions that seem to blemish that Law, the Law of England, *which they humbly conceive to be the most perfect Law of any humane Law in the World; a Law that admits* Nullum absurdum, *nothing against the Laws of God or Nature, against Reason, or repugnant to any other Learning; wherein all matters of Fact are adjudged and tried by Twelve able discreet and indifferent Neighbors to the place where the Matter of Fact arises; and the Matters of Law are debated, adjudged, and determined by as many of the most ancient, grave, and learned Lawyers of the Nation, who for their great experience, integrity and wisdom, are first deservedly called to the state and degree of Serjeants at Law, and after to be Judges; and the proceſs of this Law is so quick, that it seldom happens any Cause at Law depends above three or four Terms: But Covetousness, the root of all evil, having built some sloud-gates upon the Channel thereof, whereby the Course hath been obstructed, stopp'd, or diverted out of its due course; and thereby more care taken to catch the Fish for the benefit of the Officers, than for the dispatch and advance of the Clients business; and the Proposers being unwilling to trespass upon the Freehold of others by pulling down the Wares themselves, have by the drawing the Channel a nearer way in some*

Cases,

Caſes, and in other upon a lower flat, have nevertheleſs ſo ordered the buſineſs, as they humbly conceive that moſt of the Griſt will be ground without paying Toll at thoſe unneceſſary Mills. And becauſe Reformation wreſtles with many difficulties, it being hard to find an Epheſus *without ſome* Demetrius, *or ſome Critick that will conclude the Shrubs ſeek the fall of the Cedars, hoping thereby to advance their own tops. The Propoſers have been very tender not to propoſe any thing that may in the leaſt degree ſeem to advance their own Intereſts, but many things that will turn to their particular loſs, they alwayes preferring the publick good before their own particular intereſts. Neither have they raſhly herein proceeded, having ſpent many months in the Conception, digeſting, conſidering, and compoſing of what they now preſent to your more grave conſiderations; and as they are not the iſſues of raſh brains, ſo they have not paſſed without peruſall and correction of many others of good judgement and experience, and are now to live and die under your Honourable cenſures: whereby if you ſhall receive any light to the furthering the good work in hand, or the Republick any benefit, the Propoſers have their wiſhed ends, and humbly therein ſubmit themſelves and theſe their poor labours to your better judgements, by the hands of the moſt humble of*

Your Servants.

THE HUMBLE

PROPOSALS

Of divers of the

CLERKS and ATTORNEYS

Of His Majesties Court of

COMMON-PLEAS.

1. THey humbly propose and conceive, That Fines upon Original Writs are against the Fundamental Reason of the Common Lawes of this Realm, which never imposeth Fines but upon Offendors: But these, *Addere afflictionem afflictis*, are exacted of the party injured, who comes to sue for Justice, when the party delinquent too oft escapes the punishment. And therefore they humbly propose that the same may be taken away, and no more payd or demanded.

These Fines are the 200th part of the thing demanded, be it land, debt, or damage, and must be paid at the Plaintiffs entrance into his suit, though he never recover any thing.

2. They

This is proposed to prevent the charge & delay which the Client is now at, who must be two Terms in suing to the Utlary, and is, besides the delay, put to the charge of three *Capias*'s, which are commonly sued forth altogether, and returned altogether in the Sheriffs name, but by the Attorney; but by this course of suing to the Utlary the process will be a Term shorter, and 5 *s.* 10 *d.* less charge, besides the Fine, if finable.

2. They humbly conceive, That the mean Process in suing to the Utlary are unnecessary, and do tend only to charge and delay: And therefore they humbly propose, that then the *Exigent* be awarded upon the return of the first *Capias*, as formerly upon the *Plur. Capias*, and as it is now used after Judgement.

The Common bar and new Assignment puts the Clients in every Action of trespass *Quare clausum fregit* that comes to trial to at least twelve shillings charge, and may be supplyed by three or four words in the Declaration, and put the Client to no charge at all, and the recital of the Writ in many Actions almost doubles the charge to the Client, and is useless.

3. They humbly conceive, That the common Bar and new assignment in Actions of Trespass, *Quare clausum fregit*, and the recital of the Original Writ in Actions of Trespass, and upon the Case, and several other Actions are superfluous things, and infinitely increase the charge of the Client: They therefore humbly propose, That in all Actions of Trespass, *Quare causum fregit*, the place may be assigned in the Count. And that for the future there may be no more recital of the Original Writ, other than in the form ensuing, that is to say; *A. B. attach. fuit ad respondend. C. D. de placito tr.* or, *de placito tr. super casum*, or the like, as is observed in the Kings Bench; and the Originals in all personal Actions to be made accordingly without repetition of the special matter.

4. They humbly conceive, that by reason Original Writs are not duly sued forth and filed, many Judgements are dayly reversed, and in the time

time to come are subject to the like inconvenience by the carelesness, neglect, or forgetfulness of the Attorney, or Clerk, or to save *Post Terminums*, which turns much to the prejudice of the Client: And therefore they humbly propose, That from henceforth there may be no restraint, but that the Plaintiff may at any time before the want thereof assigned for Error, sue forth and file any original writ, or other writ, to make good or warrant any judgement. And that for the filing of Original Writs no *Post Terminum* be demanded or payd; and that then, if any judgement happen to be reversed for default of Original Writ, the Clerk or Attorney in whose default the same shall be, shall and may be fined in such sum to be payd to the party grieved, as the Court shall (having respect to the quality of the offence) think meet and impose.

Many Judgements are daily reversed for want of Originals, which sometimes happens, because the Attorney rather than he will pay a *Post Terminum* or more, which is 20 pence a Term, he will hazzard his Clients Cause, which Fee was originally intended as a punishment upon the Attorney for his neglect; but it turnes too oft to the destruction of the Client: and therefore the Proposers have proposed the punishment to return to the Clients relief, and not destruction. Other times this mischief happens, because an Attorney may perhaps forget in due time to sue out the Original, and after when he sees the default, he would amend it, but the Cursitors holding a course for their own benefit that no Original Writ can be sued forth returnable of a former Term, but within the first week of the ensuing Term, the Attorney is therefore restrained to do his duty to his Client.

5. They humbly conceive also, that the not due filing of Warrants of Attorney, which through forgetfulness or carelesness is often neglected, is very dangerous to the Client, and yet of no benefit or use at all; and therefore they humbly submit it to the judgement

The Warrant of Attorney originally seemed of good use, but now it is only filed by the Attorney, and is of no use at all, but puts the Client to some charges and much hazzard, for that the want thereof is sufficient cause to reverse a Judgement, and the filing now of no use.

of the Parliament whether the ſame be not fit to be diſcontinued, and the penal Statutes for the enjoying thereof repealed.

6. They humbly conceive, that *Damage Cleare* is both a great and unreaſonable burden to the Client, who after a long and tedious ſuit, muſt have his Debt, or other duty Tythed; a duty anciently belonging to the Clergy, but is now converted to an improper uſe (as they humbly conceive:) And therefore they humbly propoſe, that the ſame may be taken away, and no more payd or demanded.

This is the moſt unreaſonable charge upon the Client that can be invented, which is the tenth part of what damage ſoever the Plaintiff recovers: as if the Defendant upon a bargain, promiſe to give the Plaintiff a 1000 *li.* which he recovers in damage, the Prothonotary ſhall have a 100 *li.* and doth nothing for it, nor can juſtifie the giving of any coſts, for it was originally, as is conceived, exacted by the Clergy as a perſonal Tythe, the Clergy-men being the Clerks that writ to all, or moſt of the Courts at *Weſtminſter*.

7. And whereas the Client is often enforced to utlaw the Defendant, by reaſon he abſents himſelf; and after a long, chargable and tedious Suit, is put alſo to ſeize the Defendants Eſtate, and expects thereby to receive the benefit of his Suit; when contrary to the poor Suitors expectation, the whole benefit is ſwept into the *Exchequer*. They therefore for remedy thereof, humbly propoſe, that the Plaintiff in ſuch caſes may have the benefit of all Seizures

If the Client, becauſe he can get no Proces ſerved upon the Defendant, be forced to utlaw him, and then be forced to ſeize his Land to force him in, the profit goes into the *Exchequer*, and the Client loſeth all, or elſe ſhall be put to the charge of a Leaſe, which will lie him in above 20 Marks, and 4 pounds, or thereabouts yearly to continue it; and then if the party plead ſome feigned Title, or reverſe the Utlawry, all is loſt, and it is deſired, that if the Parliament conceive it fit, that this Propoſal be reduced to a Law, that care may be taken in the penning it, that the *Exchequer* Clerks may not evade it, for that lowable Laws will not hold them.

upon

upon Utlawries til his debt, or other damages with reasonable costs be satisfied and paid; and that to that end Process may issue out of the Exchequer, by which the Sheriff may be authorized, and commanded to deliver all such Goods, and Chattels, and satisfie and pay all such moneys by him to be levied to the Plaintiff, until he be satisfied of his debt or damages, with reasonable costs to be assessed by the said Court; and that afterwards the Sheriff be accomptable in the Exchequer, for the profits, as before times hath been used.

8. And also when as the Client having run over all the Process, and having obtained judgment, and expecting his Execution thereupon, Writs of Error are often brought for delay, which, though we humbly conceive our former Proposals will make good provision against, yet the same being a *Superseders*, and admitting long process, it is often more costly and dangerous to the Client, than all that hath preceded; and though they humbly conceive Appeals just and usefull; yet to prevent the inconveniences thereof, they humbly propose, That no *Superseders* upon a Writ of Error be from henceforth made forth or allowed, but that the Court where the original Judgement was entred, may make forth Execution, as though no such Writ of Error had been brought, or Record transcribed, unless the party prosecuting the same deposite in Court the Money, or other Duty recovered, or give sufficient bail, to satisfie the Judgement with the costs and damage awarded, in case the same

Judgement be affirmed, or the Writ of Error diſcontinued or abated, or the Plaintiff therein non-ſuited; and that the death of any party to the ſaid ſuit ſhall not diſcharge ſuch bail; and that from henceforth no Writ of Error ſhall be received or allowed, unleſs the ſame be returnable within eight daies, if there ſhall be ſo many in Term; and if there ſhall not happen to be eight daies in Term, then at the firſt return of the next enſuing Term; and that the Plaintiff in ſuch Writ of Error ſhall without any *Scire facias*, aſſign his Errors within four daies after the return of the ſaid Writ, whereunto the Defendant in the ſaid Error may if he will appear *gratis*, and be at liberty to alledge diminution, or joyn in iſſue, and proceed to the examination of the Errors; and that in caſe Judgement be affirmed, and it appear any ſuch Writ of Error ſhall be brought meerly for delay, or that the matter aſſigned ſhall not be difficult, or abide argument, then the party Plaintiff in the ſaid Writ of Error, to pay to the Defendant for his or their delay therein treble coſts and damage; and in caſe of Non-ſuit or diſcontinuance before argument, double coſts; and in caſe of abatement, or in ſuch caſes where the matter ſhall be difficult, ſingle coſts and damages; and that the parties may have thereof like execution as for the principle debt or damages.

9. They humbly conceive it fit, that ſome legal courſe were provided for the recovery of Legacies, and that the Client ſhould not be forced

ced to an equitable courſe in *Chancery* for every petit Legacy, the remedy whereby often proves worſe than the diſeaſe. They therefore humbly propoſe, that an Action of Debt, Trover, Detinue, or other Action, as the Caſe requires, may lie at Common Law for the ſame, and that therein the thing demanded upon due proof made upon the Tryal, may be recovered with coſts and damages, and like defence and proceſs may be had therein, as in ſuch other Actions are, or ſhall be uſed at Common Law.

There is (by reaſon the Civil Law hath no compulſatory proceſs) no remedy, but in *Chancery* for Legacies, where if the Legacy be ſmall, it is quickly ſpent with a great overplus.

10. They humbly conceive it very hard to the Creditor, that the bare alienation of an Heir ſhould defeat him of a juſt debt, the ſame being often done meerly in fraud, when perhaps the Creditors money purchaſed the land diſcending; and therefore they humbly propoſe, that an Action of debt may lie againſt the Heir in all caſes, as well after as before alienation, and that his Perſon, Goods, and Land, may be ſubject to the execution for the debt of his Anceſtors upon ſpecialty, to the value of the land diſcending in Fee-ſimple, or Fee-tail: and that ſuch Action, and this propoſal, may (if the Parliament ſhall conceive meet) be extended to the heirs of Copyholders, as well as Freeholders.

As the Law now ſtands, the Heir may defeat all Creditors, for if he ſeat the debts of the Anceſtor, he may alien the ſame day his Anceſtor dies, and leave the Creditor no *medium* to bring his Action, and though it is true that fraud may be averred, yet few frauds are hard to be proved.

11. They humbly propoſe, that for the avoiding of unneceſſary and frivolous ſuits at Law, that it may be enacted, that if any Attorney or Sollicitor ſhall depoſite in the defence or proſecution of his Clients Cauſe, any other or larger

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summ or summs, then so much as the charge thereof shall surmount unto in *Easter* Term, *Trinity* Term, and the short Vacation, or in one other Term and Vacation, that then such Attorney or Sollicitor shall be without all remedy to recover the same against the Client at Law.

12. And for the further avoiding of the frivolous suits at Law, they humbly propose, that tender of sufficient amends, with costs for all involuntary Trespasses, may be a good Bar in all Replevins and Actions of Trespas brought for the same, so that the same be done before the Rules be out for pleading in such Action.

In Replevin at Common-law tender of amends before impounding in all cases was a good Bar, and by the Statute 21 *Jac.* in trespas for involuntary Trespasses, render of amends is made a good plea, being done before Action brought: but because many times impoundings and actions are made and brought, perhaps before the Defendant hath any knowledge of the Trespass, this proposal is presented: But for voluntary trespasses it is conceived fit to leave them at the Common Law to prevent greater inconveniencies.

FINIS.